

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of

Herman & Claire Blum

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
Tax under Article 22 of the Tax Law for the Year :  
1974.

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State of New York  
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 1st day of April, 1983, he served the within notice of Decision by certified mail upon Herman & Claire Blum, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Herman & Claire Blum  
6922 E. Exeter Blvd.  
Scottsdale, AZ 85251

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
1st day of April, 1983.

David Parchuck

James A. Hagelund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

April 1, 1983

Herman & Claire Blum  
6922 E. Exeter Blvd.  
Scottsdale, AZ 85251

Dear Mr. & Mrs. Blum:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
HERMAN L. AND CLAIRE BLUM	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1974.	:	

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Petitioners, Herman L. and Claire Blum, 6922 East Exeter Boulevard, Scottsdale, Arizona 85251, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1974 (File No. 22452).

On May 14, 1981 petitioners, Herman L. and Claire Blum, advised the State Tax Commission, in writing, that they desired to waive a small claims hearing and to submit the case to the State Tax Commission upon the entire record contained in the file. After due consideration of said record, the State Tax Commission renders the following decision.

ISSUE

Whether interest income derived from a purchase money mortgage received by a nonresident is taxable by New York State.

FINDINGS OF FACT

1. Petitioners, Herman L. and Claire Blum, timely filed a joint New York State Income Tax Nonresident Return for 1974. Attached to the return was a copy of Federal Schedule K-1 addressed to petitioner Herman L. Blum reporting partnership income from salary, interest, and ordinary income of \$3,936.57 (see Finding of Fact, "5", infra). The partnership name was given as Herman Blum, Edith F. Zwerling & Jacques Artel, (tenants-in-common). Petitioners did not

report this income to New York State. On July 28, 1977, petitioners filed a notice of Federal change to their income (Form IT-115) requesting a refund of \$8.51 in personal income tax.

2. On April 10, 1978, the Audit Division issued a Notice of Deficiency against petitioners asserting personal income tax of \$503.24, plus interest of \$117.68 for a total of \$620.92. Attached to the Notice was a Statement of Audit Changes explaining that the adjustment had been made to conform with Federal changes and that partnership income from New York sources is taxable to a nonresident. The partnership adjustment pertained to Mr. Blum's distributive share of interest income derived from a purchase money mortgage and through the Federal Schedule K-1 mentioned in Finding of Fact "1".

3. On April 8, 1968, petitioner Herman L. Blum and two other people, as investors, became tenants-in-common with respect to a building located at 401-403 West 14th Street and 47-59 Ninth Avenue, New York City. Mr. Blum owned a 60 percent interest in the building.

4. A portion of the building was leased for commercial purposes to General Meat Corporation. There is no evidence in the file as to the leasing of the rest of the building. A.J. Goldstein & Company, Incorporated acted as managing agent for the owners from the date said property was purchased until the date sold. It collected the rents, negotiated basis and renewals thereof, paid all expenses in connection with the operation of the building and remitted surplus funds to the owners. The owners did not actively participate in the managing and collection of the rents of the building.

5. On October 31, 1972, petitioner Herman L. Blum and the other two tenants-in-common sold the building. The buyer gave them a purchase money mortgage. Since the date the property was sold, A. J. Goldstein & Company,

Inc. has collected the interest on the purchase money mortgage and remitted the balance to the tenants-in-common in accordance with their proportionate interests. A partnership return was used as a vehicle for distributing the pro rata shares of the income to the co-owners. The gain from the sale was reported on the installment basis. During 1974, no payments of principal were received by the sellers, only interest was received.

CONCLUSIONS OF LAW

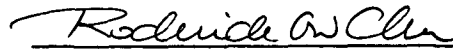
A. That Herman L. Blum was a tenant-in-common and not a partner. Since he divested himself of any ownership interest in the building, the interest income derived from the purchase money mortgage is not taxable to New York. (see Matter of Edwin E. Epstein v. State Tax Commission, 89 A.D.2d 256)

B. That the petition of Herman L. and Claire Blum is granted and the Notice of Deficiency dated, April 10, 1978 is cancelled. The Audit Division is directed to authorize a refund as indicated in Finding of Fact, "1" supra.

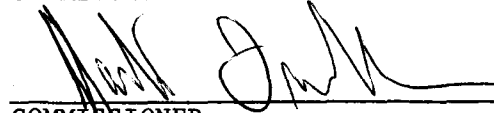
DATED: Albany, New York

STATE TAX COMMISSION

APR 01 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

PAUL B. COBURN  
SECRETARY  
Telephone: (518) 457-6162

November 4, 1983

Salvatore & Leona Bottaro  
51 Waterford Park  
Williamsville, NY 14221

Dear Mr. & Mrs. Bottaro:

Please take notice of the Default Order of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 690 of the Tax Law, any proceeding in court to review this decision must be commenced within 4 months from the date of this notice.

Inquires concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the undersigned.

Very truly yours,

PAUL B. COBURN  
SECRETARY TO THE  
STATE TAX COMMISSION

cc: Petitioner's Representative  
Cyrus C. Trossman  
Trossman & Trossman  
627 Brisbane Bldg.  
Buffalo, NY 14203  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
Salvatore & Leona Bottaro	:	<u>DEFAULT ORDER</u>
	:	83-P-35
for Revision or for Refund of Personal Income Tax	:	
under Article(s) 22 of the Tax Law	:	
for the Years 1976 & 1977.	:	

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Petitioner(s) Salvatore & Leona Bottaro, filed a petition for revision or for refund of Personal Income Tax under Article(s) 22 of the Tax Law for the Years 1976 & 1977. File No. 31611

Under Section 601.5 of the State Tax Commission Rules of Practice and Procedure, a notice was served on the petitioner(s) to file a perfected petition. Notice to file the perfected petition was sent to the petitioner(s) last known address. Petitioner(s) failed to file a perfected petition. A default has been duly noted.

Now on motion of the Secretary to the State Tax Commission, it is

ORDERED that the petition of Salvatore & Leona Bottaro be and the same is hereby denied.

DEFAULT ORDER  
ADOPTED BY THE STATE TAX COMMISSION  
ALBANY, NEW YORK  
NOVEMBER 4, 1983